

September 3, 1998

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION ON APPLICATION FOR PRELIMINARY PLAT APPROVAL**

SUBJECT: Department of Development and Environmental Services File No. **L97P0057**

**MYSTERY HEIGHTS**  
Preliminary Plat Application

Location: North of SE Lake Holm Road, 1/4 mile west of 147th Avenue SE

Applicant: Hans von der Hofen, Abbatore Enterprises, Inc.  
6337 Seaview Avenue NW, Seattle, WA 98107-2664

Engineer: Jeff Potter, Barghausen Consulting Engineers, Inc.  
8215 - 72nd Avenue South, Kent, WA 98032

**SUMMARY OF RECOMMENDATIONS:**

Department's Preliminary:	Approve, subject to conditions
Department's Final:	Approve, subject to conditions (modified)
Examiner:	Approve, subject to conditions (modified)

**PRELIMINARY MATTERS:**

Application or petition submitted:	December 17, 1997
Notice of complete application:	January 14, 1998

**EXAMINER PROCEEDINGS:**

Hearing Opened:	August 27, 1998, 9:35 a.m.
Hearing Closed:	August 27, 1998, 10:05 a.m.

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

## ISSUES ADDRESSED:

- Wetlands
- Buffers
- Slopes
- Access (vehicles)
- Wetland buffers

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

## FINDINGS:

1. **General Information.**

Owner/Developer: Hans von der Hofen, Abbatore Enterprises, Inc.  
6337 Seaview Avenue NW, Seattle, WA 98107-2664

Engineer: Jeff Potter, Barghausen Consulting Engineers, Inc.  
8215 - 72nd Avenue South, Kent, WA 98032

King County Permit Contact: Karen Scharer, DDES, LUSD  
900 Oakesdale Avenue SW, Renton, WA

Location: North of SE Lake Holm Road, 1/4 mile west of 147th Avenue SE  
STR: 15-21-05  
Zoning: RA5-PS0  
Acreage: 29.3 acres  
Number of Lots: 6  
Density: 1 dwelling per 5 acres  
Typical Lot Size: 2.4 - 5.5 acres  
Proposed Use: Single Family  
Sewage Disposal: Septic  
Water Supply: Covington  
Fire District: King County Fire District #44  
School District: Auburn School District #408  
Complete Application Date: January 14, 1998

2. **Proposal.** The applicant proposes to subdivide a 29.3-acre parcel into six single-family residential building lots. With lot sizes ranging from approximately 2.4 to 5.5 acres, the development density is proposed to approximately one dwelling unit per five acres. About seven acres will remain in open space, drainage area, and sensitive area tracts. The preliminary plat drawing is included in this hearing record as Exhibit No. 8 and as Attachment 1 to the Department of Development and Environmental Services (the "Department" or "DDES") Preliminary Report to the Hearing Examiner dated August 27, 1998 (Exhibit No. 2).
3. **Department Recommendation.** The Department recommends granting preliminary approval to the proposed plat of Mystery Heights, subject to 21 conditions of final plat approval, as stated on

pages 6 through 11 of the Department's Preliminary Report (Exhibit No. 2). In addition, the Department agrees that the interpretation of applicable Sensitive Areas regulations, as applied to the subject property, will be more clear by specifying that the wetland area and buffer within proposed "Tract A" (as shown on Exhibit No. 8) should be demarcated on the land by a split rail fence (together with, of course, appropriate signage).

4. **Applicant's Position.** The Applicant accepts the Department's final recommendation as described in Finding No. 3, preceding.
5. **SEPA.** No Environmental Impact Statement is required. On July 7, 1998, the Department issued a Threshold Determination of Non-Significance (DNS) for the proposed development. That is, the Department provided public notice (in the manner required by applicable law) that, based on its review of relevant environmental documents, it had concluded that the proposed development will not cause probable significant adverse impacts upon the environment. No appeal was filed.
6. **Issues.** The hearing presented no significant unresolved issues. The Department and the Applicant has endeavored to assure proper demarcation of sensitive areas and open space (Tracts C and D), drainage facilities (Tract E) and access (Tract F). Apparently, a private road maybe established with a gradient of up to 20%. However, the Applicant is committed to maintaining no more than a 15% gradient on the Tract F private street directed through proposed Lot Nos. 5 and 6. As indicated above, both the Department and the Applicant agree to specify that split rail fence will be used to demarcate the boundaries of the wetland/buffer area from abutting private property.
7. **Public Participation.** No member of the general public nor any neighboring property owner attended this public hearing.
8. **Department Report Adopted.** Except as noted above, the facts and analysis contained in the Land Use Services Division Preliminary Report dated August 27, 1998 are correct and are incorporated here by reference. A copy of the Land Use Services Division report will be attached to those copies of the Examiner's report which are submitted to the King County Council.

#### CONCLUSIONS:

1. Based upon the whole record, and according substantial weight to the determination of environmental significance made by the Land Use Services Division, it is concluded that approval of this subdivision as recommended below would not constitute a major action significantly affecting the quality of the environment. All evidence of environmental impact relating to the proposed action and reasonable alternatives to the proposed action have been included in the review and consideration of this action.
2. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the Comprehensive Plan, Subdivision and Zoning Codes, and other official land use controls and policies of King County.

3. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare and for drainage ways, streets, other public ways, water supply, and sanitary wastes; and it will serve the public use and interest.
4. The conditions recommended in the Land Use Services Division's Preliminary Report as amended below are in the public interest and are reasonable requirements.

**DECISION:**

The proposed plat of MYSTERY HEIGHTS, as recommended by the Department and as amended in the public hearing, is GRANTED preliminary approval; SUBJECT to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density (and minimum density) requirements of the RA5 zone classification. All lots shall meet the minimum dimensional requirements of the RA5 zone classification and shall be generally as shown on the face of the approved preliminary plat, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. The applicant must obtain final approval from the King County Health Department.
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
6. The applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.

If all lots are 35,000 square feet in size or more, or if the subdivision is outside an Urban Growth Area and is developed at a density no greater than one residential building lot per five (5) acres, or a cluster development outside an Urban Growth Area with lots under 35,000 square feet in size and offsetting permanent open space and is developed at a density no greater than one residential building lot per five (5) acres, the subdivision is exempt per KCC 17.08.030.

7. Final plat approval shall require full compliance with drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.

- a. Drainage plans and analysis shall comply with the 1990 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
- b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
- c. The following notes shall be shown on the final recorded plat:

"All building downspouts, footing drains and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings #\_\_\_\_\_ on file with DDES and/or the Department of Transportation. This plan shall be submitted with the application for any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."

- d. Core Requirement No. 3: Runoff Control.

Storm water runoff control shall be provided using standard detention design criteria outlined in the manual.

Biofiltration of storm water is also required for water quality enhancement. The size of the proposed drainage tracts may have to increase to accommodate the required detention storage volumes and biofiltration facilities. The runoff control facilities shall be located in a separate tract and dedicated to King County unless portions of the drainage tract are used for required recreational space in accordance with KCC 21A.14.180. If private roads are proposed within the development, appropriate access and maintenance easements shall be provided to King County.

Infiltration of storm water for both lot areas and roadway improvements is recommended if determined to be feasible. A geotechnical report shall be provided to evaluate soil conditions, seasonal depth to groundwater, and other design requirements as outlined in the SWM Manual.

- e. Core Requirement No. 4: Conveyance Systems.

The drainage feature crossing the property in a southwesterly direction shall be placed in a 10-foot-wide (minimum) drainage easement with a 5-foot building setback (BSBL) on each side. The easement shall extend from ROW line along SE Lake Holm Road (downslope of the existing culvert) to the south property boundary with connections between the sensitive area tracts. Additional, a 10-foot-wide drainage easement (with a 5-foot BSBL on each side) shall be provided for outflow from the R/D facility to the south property line.

As specified on page 1.2.4-4 of the SWM Manual, downspout conveyance systems for drainage within the lot areas shall include dispersion of roof runoff for lots larger than 22,000 square feet.

f. Special Requirement No. 4: Adopted Basin or Community Plans.

The proposed plat is located within the Soos Creek Community Plan that contains special P-suffix conditions. The applicable P-suffix requirements shall be addressed on the final engineering plans.

g. Special Requirement No. 9: 100-Year Floodplain.

A wetland and stream are located on the property. Surface Water Design Manual (SWDM) Section 1.3.9 requires the delineation of the 100-year floodplain boundaries to be shown on the final engineering plans and recorded plat.

8. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) including the following requirements.

- a. Southeast Lake Holm Road shall be improved as a rural minor arterial. The improvements shall extend the full length of the property frontage.
- b. Twelve feet of right-of-way (ROW) shall be dedicated along the north half of SE Lake Holm Road (adjoining the subject property) to provide 42 feet of ROW from centerline.
- c. Existing roadside obstacles shall be removed/relocated to provide a minimum clearance of 10 feet from the edge of the travel lane to the obstacles.
- d. There shall be no direct vehicular access to and from SE Lake Holm Road from those lots which abut it (Lots 1 and 3). This restriction shall be shown on the face of the engineering plans and the final recorded plat.
- e. The on-site road (Road A) shall serve all of the lots within the final plat. The road shall be placed in a 48-foot-wide (minimum) private access and utility tract. All lots shall have undivided ownership of the tract and be responsible for its maintenance. A note to this effect shall be placed on the engineering plans and final plat. Improvements shall conform to KCRS 2.03 for rural minor access roads, which include 20 feet of paving, four-foot shoulders and ditches. As an alternative, the on-site road may be a public street in dedicated right-of-way (ROW).
- f. Tract F shall be improved as private joint use driveway tract serving a maximum of two lots (Lots 5 and 6). The serving lots shall have undivided ownership of the tract and be responsible for its maintenance. A note to this effect shall be placed on the engineering plans and final plat. As specified in KCRS 3.01C, improvements shall include an 18-foot paved (or gravel) surface. The minimum tract width shall be 30 feet (if a ditch is required, KCRS Section 3.01 C.3.a.2); however, it shall be widened to contain the side slopes required through the sloped area. Adequate drainage control shall be provided.

- g. As required by KCC 21A, street trees should be included in the design of improvements for Lake Holm Road, which is classified as a minor arterial. See Condition 21 of this Report for specific requirements.
  - h. Street illumination shall be provided at intersections with arterials in accordance with KCRS 5.05.
  - i. Southeast Lake Holm Road is a designated arterial street that may require designs for bus zones and turnouts. As specified in KCRS 2.16, the designer shall contact Metro and the local school district to determine specific requirements.
  - j. Modifications to the above road conditions may be considered by King County pursuant to the variance procedures in KCRS 1.08. At the present time a variance has not been submitted.
- 9. If private roads are proposed for the subdivision, the following notes shall be shown on the final recorded plat:
  - a. Said tracts to be maintained, repaired, and/or rebuilt by the owners of the parcels having legal access therefrom and their heirs, assigns or successors, unless and until such roads are improved to King County standards and are dedicated and accepted by King County for maintenance.
  - b. Warning: King County has no responsibility to build, improve, maintain or otherwise service the private roads contained within or providing service to the property described in this short subdivision.
  - c. All restrictions, easements, tracts, and their purpose shall be shown on the final recorded plat.
- 10. The engineering plans for this project shall identify the location of any wells on the site and provide notes which address the requirements for the contractor to abandon the well pursuant to requirements outlined in the Washington Administrative Code (WAC 173-160).
- 11. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
- 12. The applicant shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: 1) pay the MPS fee at final plat recording, or 2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, a note shall be placed on the face of the plat stating: "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid". If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
- 13. The planter islands (if any) within the cul-de-sacs shall be maintained by the abutting lot owners or homeowners association. This shall be stated on the face of the final plat.

14. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS  
AND SENSITIVE AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

15. Determine the top, toe, and sides of 40% slopes by field survey. Provide a 50-foot buffer from these slopes. The buffer may be reduced to 10 feet with the submittal of a satisfactory soil report. If Tract F is located within King County regulated steep slopes, the tract shall be shifted out of this sensitive area.
16. The proposed subdivision shall comply with the Sensitive Areas Ordinance as outlined in KCC 21A.24. Permanent survey marking, and signs as specified in KCC 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed. See also condition no. 22.
17. The applicant shall delineate all on-site erosion hazard areas on the final engineering plans (erosion hazard areas are defined in KCC 21A.06.415). A DDES geologist shall approve the delineation of such areas. The requirements found in KCC 21A.24.220 concerning erosion hazard areas shall be met, including seasonal restrictions on clearing and grading activities.
18. A homeowners association or other workable organization shall be established to the satisfaction



of DDES which provides for the ownership and continued maintenance of the open space area(s).

19. The existing trailer shall be removed prior to final plat approval.
20. The following conditions shall apply to implement the P-suffix conditions to this property:
  - a. KCC 16.82.150.C & D / Rural Area Clearing Limits and Seasonal Clearing Restrictions. The applicant shall demonstrate compliance with KCC 16.82.150 C and D prior to engineering plan approval.
  - b. SO-220 / Significant Tree Retention. The applicant shall demonstrate compliance with SO-220 prior to engineering plan approval.
21. Street trees shall be provided as follows:
  - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along SE Lake Holm Road. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
  - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
  - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
  - d. The trees shall be owned and maintained by the abutting lot owner *or* the homeowners' association or other workable organization unless the County has adopted a maintenance program. This shall be noted on the face of the final recorded plat.
  - e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
  - f. The Applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
  - g. The street tree plan shall also be reviewed by Metro. The applicant shall contact Metro Service Planning at 206-684-1622.
  - h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one

year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

A \$538 landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on then current County fees.

22. In addition to signage specified by Sensitive Areas regulations, the exterior boundary of Tract A shall be demarcated by split rail fence.

ORDERED this 3rd day of September, 1998.

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R. S. Titus, Deputy  
King County Hearing Examiner

TRANSMITTED this 3rd day of September, 1998, to the parties and interested persons shown on the attached list.

#### **NOTICE OF RIGHT TO APPEAL**

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) on or before September 17, 1998. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council on or before September 24, 1998. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

#### **MINUTES OF THE AUGUST 27, 1998 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT & ENVIRONMENTAL SERVICES FILE NO. L97P0057 -- MYSTERY HEIGHTS:**

R.S. Titus was the Hearing Examiner in this matter. Participating in the hearing were Karen Scharer, Curt Foster, Jeff Potter, and Hans Von der Hofen.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 Department of Development and Environmental Services File No. L97P0057
- Exhibit No. 2 Department of Development and Environmental Services Preliminary Report to the Hearing Examiner for the August 27, 1998 public hearing
- Exhibit No. 3 Application, submitted December 17, 1997
- Exhibit No. 4 Environmental Checklist, received December 17, 1998
- Exhibit No. 5 SEPA Threshold Determination, dated July 7, 1998
- Exhibit No. 6 Notice of Application, posted January 27, 1998
- Exhibit No. 7 Notice of Recommendation, posted July 7, 1998
- Exhibit No. 8 Preliminary Plat Drawing, revised April 29, 1998
- Exhibit No. 9 Assessor Maps, SE 15-21-05, SW 15-21-05, NW 22-21-05, NE 22-21-05
- Exhibit No. 10 Level 1 Drainage Analysis, March 28, 1997, by Barghausen Consulting
- Exhibit No. 11 Wetland Evaluation and Delineation, July 18, 1998, by Watershed Dynamics
- Exhibit No. 12 Letter dated August 24, 1998 from Barghausen Consulting, with revised recommendations
- Exhibit No. 13 Card catalog record from DDES files for File P69-199, Weyerhaeuser Properties

RST:gb/vam  
Attachment  
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